

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

MICHAEL-EDWARD and TAMMIE-  
MARIE,

Plaintiffs,

v.

U.S. BANK NATIONAL  
ASSOCIATION N.A., et al.,

Defendants.

No. CV 08-1108-HU

FINDINGS AND  
RECOMMENDATION

Michael-Edward  
Tammie-Marie  
P.O. Box 1804  
Fairview, Oregon 97024  
Pro se

Janaya L. Carter  
Routh Crabtree Olsen  
3535 Factoria Boulevard SE, Suite 200  
Bellevue, Washington 98006  
Attorney for defendants U.S. Bank, Routh Crabtree Olsen,  
P.C., Janaya Lee Carter and Teresa M. Shill

Christopher A. Gilmore  
Senior Assistant County Counsel  
155 N. First Avenue, Suite 340-MS 24  
Hillsboro, Oregon 97124  
Attorney for defendant Rob Gordon

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1 HUBEL, Magistrate Judge:

2 Plaintiffs Michael-Edward and Tammie-Marie bring this action  
3 *pro se* against U.S. Bank National Association (U.S. Bank); Routh  
4 Crabtree Olsen, P.C., a law firm (RCO); two attorneys associated  
5 with RCO, Janaya Lee Carter and Teresa M. Shill; Nancy Hochman;  
6 Thomas W. Kohl; Rob Gordon; Malia Wasson; and Jerry A. Grundhofer.  
7 The complaint is captioned "Libel in Review," "Counterclaim and  
8 Injunction in Admiralty." Attached to the complaint are documents  
9 from an action brought by U.S. Bank in the Circuit Court for  
10 Washington County, Oregon, Case No. CO8-1679EV, relating to the  
11 eviction of Michael E. Delaney and Tammie M. Delaney from the  
12 premises at 6732 Southwest Terri Court, Portland, Oregon 97225, see  
13 Complaint, Attachment Four A, pursuant to a trust deed foreclosure.  
14 Id. at Attachment Four B. Also attached to the complaint are two  
15 letters, each dated May 16, 2008, signed by Janaya Carter as  
16 attorney for U.S. Bank, addressed to Michael E. Delaney and Tammie  
17 M. Delaney, stating that the property at 6732 S.W. Terri Court,  
18 Portland, Oregon was sold at a trustee's foreclosure sale on May 6,  
19 2008. The letters demand that Mr. and Ms. Delaney, and any other  
20 occupants, surrender possession and vacate the property  
21 immediately. Id.

22 The complaint alleges that Michael-Edward and Tammie-Marie  
23 make a "restricted appearance under Rule E(8) in the alternative,  
24 as a Matter of unconditional Right and Privilege to challenge  
25 alleged rights under maritime liens and notice of seizure" by the  
26 defendants. Complaint ¶ 1. The complaint alleges further that

1 plaintiffs "lawfully own and hold title to the private land and  
2 dwelling house, commonly known as 6732 Southwest Terri Court, in  
3 Portland, Oregon," id. at ¶ 2, and that U.S. Bank has invoked a  
4 state statutory foreclosure proceeding to "transfer title" from  
5 plaintiffs to U.S. Bank pursuant to the terms of a promissory note.  
6 Id. at ¶ 3.

7 Defendants U.S. Bank, RCO, Janaya Carter, Teresa Shill, and  
8 Rob Gordon move to dismiss the complaint on several grounds,  
9 including lack of subject matter jurisdiction, lack of personal  
10 jurisdiction, improper service of process, failure to state a  
11 claim, claim preclusion, and failure to comply with Rule 3 of the  
12 Federal Rules of Civil Procedure. Plaintiffs have filed no response  
13 to the motions.

14 I recommend that the action be dismissed for lack of subject  
15 matter jurisdiction. Although the complaint is 36 pages long,  
16 exclusive of attachments, the substance of the complaint relates to  
17 the eviction proceedings in the Circuit Court of the State of  
18 Oregon for Washington County for premises located in Washington  
19 County, Oregon.

#### 20 **Standard**

21 Federal courts are courts of limited jurisdiction, whose power  
22 to adjudicate claims is limited to that granted by Congress. Unless  
23 a grant of jurisdiction over a particular case affirmatively  
24 appears, the court is presumed to lack jurisdiction. See, e.g.,  
25 Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 376-78  
26 (1994); Bender v. Williamsport Area School Dist., 475 U.S. 534, 541

1 (1986) ("federal courts are not courts of general jurisdiction; they  
2 have only the power that is authorized by Article III of the  
3 Constitution and the statutes enacted by Congress pursuant  
4 thereto"). Subject matter jurisdiction is a threshold issue, in the  
5 absence of which the court cannot proceed to hear other issues.  
6 Blackburn v. United States, 100 F.3d 1426 (9th Cir. 1996).

#### 7 **Discussion**

8 Although the complaint designates this action as one brought  
9 as a libel in admiralty, it is apparent from the face of the  
10 complaint that no admiralty jurisdiction exists. The admiralty  
11 jurisdiction of the federal courts is governed by 28 U.S.C. § 1333,  
12 which provides:

13 [T]he district courts shall have original jurisdiction,  
14 exclusive of the courts of the States, of: 1) any civil  
15 case of admiralty or maritime jurisdiction ... [and] 2)  
16 any prize brought into the United States and all  
17 proceedings for the condemnation of property taken as  
18 prize.

19 Admiralty claims as such do not arise under the laws of the United  
20 States within the meaning of 28 U.S.C. § 1331, and therefore are  
21 not federal question cases. Romero v. Int'l Terminal Operating Co.,  
22 358 U.S. 354 (1959).

23 In determining the boundaries of admiralty jurisdiction, the  
24 court looks to the purpose of the Congressional grant. Exxon Corp.  
25 v. Central Gulf Lines, Inc., 500 U.S. 603, 608 (1991). The  
26 fundamental interest giving rise to maritime jurisdiction is the  
27 protection of maritime commerce. Id., quoting Sisson v. Ruby, 497  
28 U.S. 358, 367 (1990) and Foremost Ins. Co. v. Richardson, 457 U.S.  
668, 674 (1982). The court can find no allegations of a maritime

1 nature on the face of the complaint. I conclude, therefore, that  
2 admiralty jurisdiction does not exist over this case.

3 Nor does the complaint contain allegations supporting federal  
4 question jurisdiction. For a complaint to state a claim arising  
5 under federal law, it must be clear from the face of the complaint  
6 that there is a federal question involved in the case. Duncan v.  
7 Stuetzel, 76 F.3d 1480, 1485 (9<sup>th</sup> Cir. 1996).

8 Although the complaint contains references to procedural and  
9 substantive due process (§ 1), the First, Fourth, Fifth, Sixth,  
10 Seventh, Ninth and Thirteenth Amendments to the Constitution (§§ 8,  
11 33), a "federal land patent," (§§ 2, 3) the International Monetary  
12 Fund (§ 8), the Internal Revenue Code (§§ 12, 22), "international  
13 and federal laws," (§ 27), federal treason and conspiracy statutes  
14 (§ 30), agents of a foreign principal (§ 32), the Trading with the  
15 Enemy Act (§ 34), and INTERPOL (§§ 15, 17, 18, 19), mere references  
16 to the Constitution or federal statutes in a pleading will not  
17 convert a state law claim into a federal cause of action if the  
18 federal statute is not a necessary element of the state law claim.  
19 Easton v. Crossland Mortgage Corp., 114 F.3d 979, 982 (9<sup>th</sup> Cir.  
20 1997) (per curiam). I conclude that federal question jurisdiction  
21 does not exist over this case, either under the literal language of  
22 the complaint or under a properly pleaded complaint. Id.

### 23 Conclusion

24 I recommend that the motions to dismiss filed by defendants  
25 (doc. ## 4, 8, 10) be GRANTED on the ground that the court lacks  
26 subject matter jurisdiction.

**Scheduling Order**

The above Findings and Recommendation will be referred to a United States District Judge for review. Objections, if any, are due December 16, 2008. If no objections are filed, review of the Findings and Recommendation will go under advisement on that date. If objections are filed, a response to the objections is due December 30, 2008, and the review of the Findings and Recommendation will go under advisement on that date.

Dated this 1<sup>st</sup> day of December, 2008.

/s/ Dennis James Hubel

Dennis James Hubel  
United States Magistrate Judge